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THE HONORABLE JUDGE ZILLY

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10 *Attorney for Plaintiff, Austin McNamee*
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18 **UNITED STATES DISTRICT COURT**
19 **WESTERN DISTRICT OF WASHINGTON**
20 **AT SEATTLE**

21 AUSTIN MCNAMEE,

22 Plaintiff,

23 v.

24 EQUIFAX INFORMATION SERVICES
25 LLC, a Georgia Limited Liability Company,

26 Defendant.

NO. 2:17-cv-01427-TSZ

**STIPULATED PROTECTIVE
ORDER**

18 IT IS HEREBY STIPULATED by and between Plaintiff Austin McNamee and
19 Defendant Equifax Information Services, LLC ("Equifax") as follows:

20 1. **PURPOSES AND LIMITATIONS**

21 Discovery in this action is likely to involve production of confidential, proprietary, or
22 private information for which special protection may be warranted. Accordingly, the parties
23 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The
24 parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket
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26 STIPULATED PROTECTIVE ORDER

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1 protection on all disclosures or responses to discovery, the protection it affords from public
2 disclosure and use extends only to the limited information or items that are entitled to
3 confidential treatment under the applicable legal principles, and it does not presumptively entitle
4 parties to file confidential information under seal.

5 **2. "CONFIDENTIAL" MATERIAL**

6 "Confidential" material shall include the following documents and tangible things
7 produced or otherwise exchanged:

- 8 a. information prohibited from disclosure by statute;
- 9 b. research, technical, commercial or financial information that the party has
10 maintained as confidential, and that, if disclosed to customers or
11 competitors, would tend to damage the party's competitive position;
- 12 c. information and documents that a party has a reasonable and good faith
13 belief constitutes, contains, or refers to proprietary technology or
14 information owned or developed by the producing party, and that, if
15 disclosed to customers or competitors, would tend to damage the party's
16 competitive position, including, but not limited to training, compliance
17 and policy manuals.

18 **3. SCOPE**

19 The protections conferred by this agreement cover not only confidential material (as
20 defined above), but also (1) any information copied or extracted from confidential material; (2)
21 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony
22 or presentations by parties or their counsel that might reveal confidential material.

23 However, the protections conferred by this agreement do not cover information that is in
24 the public domain or becomes part of the public domain through trial or otherwise.

1 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

2 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
3 or produced by another party or by a non-party in connection with this case only for prosecuting,
4 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
5 the categories of persons and under the conditions described in this agreement. Confidential
6 material must be stored and maintained by a receiving party at a location and in a secure manner
7 that ensures that access is limited to the persons authorized under this agreement.

8 Nothing in this Order shall prevent a party from using at trial any information or materials
9 designated “Confidential.”

10 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
11 ordered by the court or permitted in writing by the designating party, a receiving party may
12 disclose any confidential material only to:

13 (a) the receiving party’s counsel of record in this action, as well as employees of
14 counsel to whom it is reasonably necessary to disclose the information for this litigation;

15 (b) the officers, directors, and employees (including in house counsel) of the
16 receiving party to whom disclosure is reasonably necessary for this litigation.

17 (c) experts and consultants specifically retained in connection with this litigation
18 to whom disclosure is reasonably necessary and who have signed the “Acknowledgment
19 and Agreement to Be Bound” (Exhibit A);

20 (d) the court, court personnel, and court reporters and their staff;

21 (e) copy or imaging services retained by counsel to assist in the duplication of
22 confidential material, provided that counsel for the party retaining the copy or imaging service
23 instructs the service not to disclose any confidential material to third parties and to immediately
24 return all originals and copies of any confidential material;

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

All persons receiving documents produced pursuant to this Order shall be advised of their confidential nature. All persons to whom confidential information and/or documents are disclosed are hereby enjoined from disclosing same to any person except as provided herein, and are further enjoined from using same except in the preparation for and trial of the above captioned action between the named parties thereto. No person receiving or reviewing such confidential documents, information or transcript shall disseminate or disclose them to any person other than those described above in Section 4.2 and for the purposes specified, and in no event shall such person make any other use of such document or transcript.

4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

5. DESIGNATING PROTECTED MATERIAL

1 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
2 or non-party that designates information or items for protection under this agreement must take
3 care to limit any such designation to specific material that qualifies under the appropriate
4 standards. The designating party must designate for protection only those parts of material,
5 documents, items, or oral or written communications that qualify, so that other portions of the
6 material, documents, items, or communications for which protection is not warranted are not
7 swept unjustifiably within the ambit of this agreement.

8 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
9 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
10 unnecessarily encumber or delay the case development process or to impose unnecessary
11 expenses and burdens on other parties) expose the designating party to sanctions.

12 If it comes to a designating party's attention that information or items that it designated
13 for protection do not qualify for protection, the designating party must promptly notify all other
14 parties that it is withdrawing the mistaken designation.

15 5.2 Manner and Timing of Designations. Except as otherwise provided in this
16 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
17 ordered, disclosure or discovery material that qualifies for protection under this agreement must
18 be clearly so designated before or when the material is disclosed or produced.

19 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
20 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
21 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that
22 contains confidential material. If only a portion or portions of the material on a page qualifies
23 for protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by
24 making appropriate markings in the margins).

(b) Testimony given in deposition or in other pretrial proceedings: the parties and any participating non-parties must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the transcript, of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect confidential information at trial, the issue should be addressed during the pre-trial conference.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party's right to secure protection under this agreement for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this agreement.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any party or non-party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The parties must make every attempt to resolve any dispute

1 regarding confidential designations without court involvement. Any motion regarding
2 confidential designations or for a protective order must include a certification, in the motion or
3 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
4 conference with other affected parties in an effort to resolve the dispute without court action.
5 The certification must list the date, manner, and participants to the conference. A good faith
6 effort to confer requires a face-to-face meeting or a telephone conference.

7 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
8 intervention, the designating party must file and serve a motion to retain confidentiality under
9 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable) . The burden of
10 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
11 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
12 other parties) may expose the challenging party to sanctions. All parties shall continue to
13 maintain the material in question as confidential until the court rules on the challenge.

14 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
15 LITIGATION

16 If a party is served with a subpoena or a court order issued in other litigation that compels
17 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
18 party must:

- 19 (a) promptly notify the designating party in writing and include a copy of the
20 subpoena or court order;
- 21 (b) promptly notify in writing the party who caused the subpoena or order to
22 issue in the other litigation that some or all of the material covered by the subpoena or order is
23 subject to this agreement. Such notification shall include a copy of this agreement; and
- 24 (c) cooperate with respect to all reasonable procedures sought to be pursued by

1 the designating party whose confidential material may be affected.

2 8. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

3 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
4 material to any person or in any circumstance not authorized under this agreement, the receiving
5 party must immediately (a) notify in writing the designating party of the unauthorized
6 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
7 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms
8 of this agreement, and (d) request that such person or persons execute the “Acknowledgment
9 and Agreement to Be Bound” that is attached hereto as Exhibit A.

10 9. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
11 **MATERIAL**

12 When a producing party gives notice to receiving parties that certain inadvertently
13 produced material is subject to a claim of privilege or other protection, the obligations of the
14 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
15 provision is not intended to modify whatever procedure may be established in an e-discovery
16 order or agreement that provides for production without prior privilege review. The parties agree
17 to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

18 10. **NON TERMINATION AND RETURN OF DOCUMENTS**

21 Within 60 days after the termination of this action, including all appeals, and upon written
22 notice by the designating party, each receiving party must return all confidential material to the
23 producing party, including all copies, extracts and summaries thereof. Alternatively, the parties
24 may agree upon appropriate methods of destruction.

1 Notwithstanding this provision, counsel are entitled to one archival copy of all documents
2 filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and
3 trial exhibits, expert reports, attorney work product, and consultant and expert work product,
4 even if such materials contain confidential material.

5 The confidentiality obligations imposed by this agreement shall remain in effect until a
6 designating party agrees otherwise in writing or a court orders otherwise.
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8 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

9 Dated this 8th day of May, 2018.

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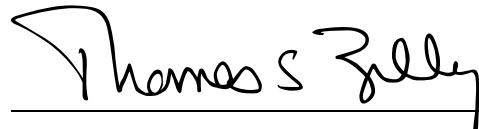
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25 JeffEdelson@markowitzherbold.com
26 *Attorney for Defendant Equifax Information Services LLC*

27 PURSUANT TO THE STIPULATION AS MODIFIED, IT IS SO ORDERED.

28 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
29 documents in this proceeding shall not, for the purposes of this proceeding or any other
30 STIPULATED PROTECTIVE ORDER

1 proceeding in any other court, constitute a waiver by the producing party of any privilege
2 applicable to those documents, including the attorney-client privilege, attorney work-product
3 protection, or any other privilege or protection recognized by law.
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6 DATED: May 10, 2018.
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9 Thomas S. Zilly
United States District Judge
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STIPULATED PROTECTIVE ORDER

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on _____ [date] in the case of *Austin McNamee v. EQUIFAX INFORMATION SERVICES LLC, a Georgia Limited Liability Company, Western District of Washington (Seattle) Case No. 2:17-cv-01427-TSZ*. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____